IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM A. D. 1958

STATES OF WISCONSIN, MINNESOTA, OHIO and THE COMMONWEALTH OF PENNSYLVANIA,
Complainants,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,
Defendants.

No. 2 Original

STATE OF MICHIGAN,
Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,
Defendants.

No. 3 Original

STATE OF NEW YORK,
Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,
Defendants.

No. 4 Original

ANSWER OF COMPLAINANTS TO REPLY OF DEFENDANTS TO THE MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

To the Honorable the Chief Justices and Associate Justices of the Supreme Court of the United States:

In the reply brief of the defendants to the memorandum of the United States as amicus curiae they disagree with the Solicitor General's recommendation that a Master be appointed, because, they say, the Solicitor General concludes "that the complainants have not made out a case, and that no factual basis for modifying the 1930 decree has been established . . ." (p. 2). The complainant states have filed exceptions to the Solicitor General's memorandum and we here want to take exception also to this unwarranted statement in the reply brief which we are presently answering.

The defendants are under the misapprehension that no substantial changes or circumstances have occurred since

1930 which would require this Court to reevaluate the situation as it exists today against the background of the facts which were developed in 1927 and 1928 before Special Master Charles Evans Hughes.

Apparently the defendants are under the delusion that the complainants should be satisfied with the present terms of the decree and that there is no basis for complainants' insistence that the amount of water which the defendants expect to divert will be increased in the future.

We here take emphatic exception to this misstatement. As further proof that this is a gross misstatement on the part of the defendants, we wish to call the Court's attention to the fact that during numerous sessions of Congress the representatives of the State of Illinois and the Sanitary District of Chicago have been before both Houses of the Congress pleading that they be allowed to divert greater quantities of water from Lake Michigan than were permitted by the decree of this Court. These efforts were outlined in detail in the original application filed for modification of the decree and the brief in support thereof filed by the complainants. They are referred to in the Solicitor General's brief on pages 11 and 12 and the footnotes thereon.

At the present time HR-1 providing for an increase in diversion of 1,000 c.f.s. for a period of one year has passed the House at this session and is now before the Senate Public Works Committee. We are attaching hereto as Appendix A a copy of HR-1. It will be observed that the ostensible purpose of HR-1 is to authorize the making of a study of the degree of improvement in the waterway which would result from an increased diversion of 1,000 c.f.s. for a period of one year. However, the real objective of the bill is to allow this increased diversion of

fresh water from Lake Michigan for the purpose of determining what dilutional effect it would have on the presently sewage-laden waters of the canal. That this additional fresh water diversion from Lake Michigan is wanted to help the defendants flush the sewage which they have allowed to accumulate in the canal is evidenced from the hearings held on all these bills, particularly HR-2 in the 85th and HR-1 now pending before the Senate.

The last sentence of Bill HR-1 states:

> "The report on such results shall contain recommendations with respect to continuing the authority to divert water from Lake Michigan into the Illinois Waterway in the amount authorized by the first section of this Act, or increasing or decreasing such amount."

It can be seen here that one of the objectives of this bill is to establish a present need for an increase in fresh water diversion ostensibly because it is required to assist the Sanitary District to dilute the sewage which it presently discharges into the canal. It is obvious, too, that if the dilution provided by the increase of fresh Lake Michigan water results in an improvement in the condition of the sewage-laden water in the canal, then the demand will be made by representatives from the State of Illinois that the increased diversion be allowed to continue. To demonstrate to the Court that the defendants have not abided by the requirements of this Court's orders that they construct and operate a complete and efficient sewage collection and treatment system, we are enclosing herewith as Appendix B a report of a recent survey made of portions of the canal which amply proves that the defendants have allowed the canal to become a veritable cesspool. And after having brought about these conditions through their own deliberate acts, they have the

temerity to repeat the demands they were making to this Court before 1930 that they be allowed to divert water from Lake Michigan to flush their sewage into the Mississippi Watershed.

Consequently we should like to ask the following questions:

(1) If the defendants are dissatisfied with the amount of direct diversion permitted by this Court's decree of April 21, 1930, why do they not come into this Court instead of going to Congress for permission to increase the direct diversion? Does Congress have authority to sanction a diversion for sanitation purposes?

(2) If conditions today are exactly as they were anticipated in 1930 by the Master, why do the defendants want to secure Congressional sanction for an increase in diversion of 1,000 c.f.s.?

(3) Did the Master and this Court anticipate in 1930 that attempts would be made to circumvent the jurisdiction of this Court by appeals addressed to Congress to sanction an increase in the diversion limited by the decree of this Court?

(4) Why do the defendants fail to disclose the changes in conditions that have occurred since entry of the decree in 1930 that make it necessary for them to appeal practically to every session in Congress for permission to increase the diversion limited by the Court's decree?

It ill behooves the defendants to insist on the one hand that nothing has occurred since 1930 which will bring about an increase in diversion of water from Lake Michigan and yet on the other hand present to the Congress

persistent and excruciating cries for more water to be diverted from the Great Lakes Basin so that they might have additional fresh water for dilution of their uncollected and untreated sewage. Why, we repeat, why is more water demanded by the defendants from the Great Lakes Basin if conditions are today as they were in 1930?

To the complainants this salient fact is enough in and of itself to cast a serious cloud over the claim made by the defendants that the complainants have failed to make a sufficient showing that nothing of an untoward nature has taken place since 1930 which should require this Court to take a "new look" at what has gone amiss since 1930. We cannot believe that this Court will shut its eyes to patent and obvious facts; namely, that in disobedience to the commands of this Court, the defendants have failed to construct and operate a complete system of sewage collection and treatment so that the sewage wastes emanating from the city of Chicago and the 51 communities comprising the Sanitary District may be properly and adequately taken care of *by means other than direct diversion of water from Lake Michigan.*

This single fact alone, namely, the persistent demand for more fresh water to be diverted from Lake Michigan for dilution purposes under the color of Congressional sanction, we say, should be sufficient to convince this Court that the time is now ripe for the appointment of a Master to make an investigation of this whole complex situation so that the Court can do justice between the parties.

For we repeat that if the defendants were compelled by either a supplemental decree or an amended decree *to completely collect all the sewage and industrial wastes for which they are responsible and accord all of such*

wastes the best treatment which is known to modern sanitary science, the defendants could be required either to return this treated effluent back to Lake Michigan or in lieu thereof to eliminate entirely or in part the present direct diversion of 1500 c.f.s. To determine how this can best be done and the measures which should be taken to accomplish this objective requires the painstaking labors of a Master under appointment by this Court.

Respectfully submitted,

STATE OF WISCONSIN
John Reynolds
Attorney General
Roy Tulane
Assistant Attorney General

STATE OF MINNESOTA
Miles Lord
Attorney General
Raymond A. Haik
Special Assistant
Attorney General

STATE OF OHIO
Mark McElroy
Attorney General
J. Harold Read
Assistant Attorney General

Herbert H. Naujoks
Special Assistant to the Attorneys General

COMMONWEALTH OF
PENNSYLVANIA
Anne X. Alpern
Attorney General
Lois G. Forer
Deputy Attorney General

STATE OF MICHIGAN
Paul L. Adams
Attorney General
Samuel J. Torina
Solicitor General
Nicholas V. Olds
Assistant Attorney General

STATE OF NEW YORK
Louis J. Lefkowitz
Attorney General
Richard H. Shepp and
Dunton F. Tynan
Assistant Attorneys General

John R. Davison
POWER AUTHORITY
OF NEW YORK

APPENDIX A

86TH CONGRESS
1ST SESSION

H. R. 1

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1959

Mr. O'BRIEN of Illinois introduced the following bill; which was referred to the Committee on Public Works

---

A BILL

To require a study to be conducted of the effect of increasing the diversion of water from Lake Michigan into the Illinois Waterway for navigation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to provide the basis for the study, authorized by section 2 of this Act, of the effect of increased diversion of water from Lake Michigan, in addition to the one thousand five hundred cubic feet of water per second presently provided by the 1930 decree of the Supreme Court of the United States (281 U.S. 181-202) and subsequently authorized by the Rivers and Harbors Act of 1930 (46 Stat. 918, 929), upon the Illinois Waterway and the degree of improvement in such water-

way caused thereby, and the effect of such increased diversion upon commerce among the several States and navigation on the Great Lakes and the Illinois Waterway, authority is hereby granted to the State of Illinois and the Metropolitan Sanitary District of Greater Chicago, under the supervision and direction of the Secretary of the Army, to withdraw water from Lake Michigan for the one-year period specified in paragraph (3) of subsection (b) of section 2 of this Act, in addition to all domestic pumpage, at a rate providing a total annual average of not more than two thousand five hundred cubic feet of water per second, to flow into the Illinois Waterway during such one-year period, subject to the following limitations:

(1) The Secretary of the Army shall at all times have direct control and supervision of the amounts of water directly diverted from Lake Michigan.

(2) The Secretary of the Army shall not allow any water to be directly diverted from Lake Michigan to flow into the Illinois Waterway during times of flood in the Illinois, Des Plaines, Chicago, or Calumet Rivers.

SEC. 2. (a) During the three-year period beginning on the date of enactment of this Act the Secretary of Health, Education, and Welfare, in cooperation with the Secretary of the Army (acting through the Chief of Engineers), shall cause a study to be made of the effect on Lake Michigan and on the Illinois Waterway of the increased annual diversion of one thousand cubic feet of water per second for the one-year period authorized by this Act, and the improvement in navigation conditions and other improvements along the Illinois Waterway which may result from such increased diversion.

(b) The study authorized to be made by subsection (a) of this section shall be divided into the following phases:

(1) The first period of six months shall begin on the date of enactment of this Act and shall be used to develop plans for the tests and range of studies of the Illinois Waterway, with no increase in the authorized diversion from Lake Michigan during such period.

(2) The twelve-month period immediately following the period specified in paragraph (1) shall be devoted to a stream survey of the Illinois Waterway under existing conditions, with no increase in the authorized diversion from Lake Michigan during such period.

(3) The twelve-month period immediately following the period specified in paragraph (2) shall be used to study the conditions in the Illinois Waterway with a total annual average diversion of two thousand five hundred cubic feet of water per second (comprising the authorized diversion of one thousand five hundred cubic feet of water per second and the additional one thousand cubic feet of water per second authorized by the first section of this Act) in addition to all domestic pumpage.

(4) The six-month period immediately following the period specified in paragraph (3) shall be used to prepare the final report required by subsection (c) of this section.

(c) Upon completion of the study authorized by subsection (a) of this section, the Secretary of Health, Education, and Welfare and the Secretary of the Army shall correlate the results of such study. Thereafter the Secretary of the Army shall report such results to Congress on or before June 1, 1962. The report on such results shall

contain recommendations *with respect to continuing the authority to divert water from Lake Michigan into the Illinois Waterway in the amount authorized by the first section of this Act, or increasing or decreasing such amount. (italics ours)*

86TH CONGRESS
1ST SESSION

H. R. 1

A BILL

To require a study to be conducted of the effect of increasing the diversion of water from Lake Michigan into the Illinois Waterway for navigation, and for other purposes.

By Mr. O'BRIEN of Illinois

JANUARY 7, 1959

Referred to the Committee on Public Works